

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DOYLE WHEELER and CARRI WHEELER,	)	
husband and wife, individually	)	NO. CV-10-0202-LRS
and on behalf of similarly	)	
situated Washington residents,	)	ORDER RE APRIL 19, 2012 MOTION
	)	HEARING
Plaintiffs,	)	
	)	
-vs-	)	
	)	
NOTEWORLD, LLC, d/b/a NOTEWORLD	)	
SERVICING CENTER, a Delaware	)	
limited liability company;	)	
NATIONWIDE SUPPORT SERVICES,	)	
INC., a California corporation;	)	
FREEDOM DEBT CENTER, a	)	
California corporation; and JOHN	)	
and JANE DOES A-K,	)	
	)	
Defendants.	)	

BEFORE THE COURT, with oral argument, were the following motions:  
Defendant Freedom Debt Center's ("Freedom") Motion to Stay Trial Court  
Proceedings, ECF No. 91, filed January 11, 2012; Plaintiffs' Motion for  
Class Certification, ECF No. 110, filed February 1, 2012; and Defendant  
Nationwide Support Services, Inc.'s ("Nationwide") Motion to Seal, ECF  
No. 131, filed February 10, 2012.

1 **I. BRIEF BACKGROUND**

2 On June 24, 2010 the Wheeler's filed this action, claiming Freedom,  
3 with respect to the agreement at issue, was a "debt adjuster" within the  
4 meaning of RCW 18.28 et seq., that the fees charges by Freedom violated  
5 that statute, and that, by violating RCW 18.28 et seq., Freedom also  
6 violated Washington's Consumer Protection Act, RCW 19.86 et seq.

7 On September 13, 2011, Defendant Freedom filed a motion to compel  
8 arbitration in this matter. (ECF Nos. 47-50). On October 27, 2011, this  
9 Court entered an Order Denying Defendant Freedom's Motion to Compel  
10 Arbitration. (ECF No. 70). Subsequently, on November 23, 2011, Defendant  
11 Freedom filed an interlocutory appeal of the order denying the motion to  
12 compel arbitration. (ECF Nos. 80-81).

13 **II. DISCUSSION**

14 **A. Defendants' Motion to Stay (ECF No. 91)**

15 Defendant Freedom moves for an Order Staying Proceedings pending  
16 resolution of the interlocutory appeal before the Ninth Circuit Court of  
17 Appeals. Defendant Nationwide joins in the motion to stay the trial  
18 court proceedings pending interlocutory appeal.  
19

20 Defendants Freedom and Nationwide argue that a stay is appropriate  
21 because a reversal of this Court's ruling denying the motion to compel  
22 arbitration would mandate that Plaintiffs submit their claims to  
23 arbitration rendering this proceeding moot. Defendants further argue  
24 that a stay would save all parties from the burden of conducting futile  
25 litigation and conserve judicial resources.  
26

1 Plaintiffs oppose the motion to stay, asserting that a "meritless"  
2 interlocutory appeal by one defendant in this multiparty case, regarding  
3 an ancillary issue unrelated to the merits, is an inadequate reason for  
4 further delay. Plaintiffs assert that Defendant Freedom fails to  
5 demonstrate that the Court's denial of its Motion to Compel Arbitration  
6 presents a substantial question that would warrant the significant  
7 additional delay. Plaintiffs argue that additional delay would cause  
8 further ongoing harm and prejudice to hundreds of Washington consumers  
9 who are subject to Defendants' ongoing allegedly illegal debt settlement  
10 activities. Plaintiffs conclude the balance of equities strongly favors  
11 denial of Defendant's motion to stay.  
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13 In reply, Defendant Freedom argues that a substantial question has  
14 been presented on appeal for resolution by the Ninth Circuit. Defendant  
15 Freedom argues that the cases cited by Plaintiffs do not answer this  
16 question: Whether a trial court, applying Washington law, should be able  
17 to defeat arbitration provisions by applying unconscionability and  
18 severance concepts to arbitration contracts differently than other  
19 contracts? In its appeal, Defendant Freedom states it will ask the  
20 Ninth Circuit to articulate a clear test for when state law  
21 unconscionability and severability provisions can be applied to  
22 arbitration provisions versus other contracts, in light of *Concepcion*<sup>1</sup>  
23  
24  
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26 <sup>1</sup>*AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011).

1 and *CompuCredit*.<sup>2</sup> Defendants also indicate that the Ninth Circuit has  
2 recently reversed the United States District Court for the Western  
3 District of Washington's order, which denied defendants-appellants'  
4 motion to compel arbitration in *Coneff v. AT & T Corp.*, --- F.3d ----,  
5 2012 WL 887598 (9<sup>th</sup> Cir. 2012). Defendants suggest that the AT&T case  
6 instructs that under Washington law, the question whether both  
7 procedural and substantive unconscionability is required before a  
8 contract is invalidated, is not settled.

9  
10 The Court finds that judicial economy dictates staying the present  
11 action pending the interlocutory appeal. This action was filed on June  
12 24, 2010, and stayed while the Washington Supreme Court resolved related  
13 questions certified by this Court in the *Carlsen v. Global Client*  
14 *Solutions* case, No. CV-09- 246-LRS (E.D. Wash.). On August 2, 2011, the  
15 Court entered a Scheduling Order. ECF No. 45. If Defendant Freedom is  
16 successful on appeal, this proceeding could be rendered moot.  
17 Furthermore, defense counsel have represented that, to the best of their  
18 knowledge, no allegedly illegal fees are currently being collected.  
19 Thus, the alleged ongoing harm to the proposed Washington class of  
20 individuals or future class of individuals who are or will be engaged in  
21 Defendant's services is effectively halted.

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25 <sup>2</sup>*CompuCredit Corp. v. Greenwood*, 2012 WL 43514 (Jan. 2012).  
26 Defendant Freedom states that the Supreme Court issued a strong  
endorsement of arbitration in this very recent opinion involving consumer  
debt litigation.

1           **B. Defendant Nationwide's Motion to Seal (ECF No. 131)**

2           Defendant Nationwide requests that the exhibits attached to the  
3 Declaration Of Kristy L. Bergland filed by in support of Plaintiffs'  
4 Motion For Class Certification remain confidential and sealed.

5 Defendant asserts these documents reflect client names and identifying  
6 information, client status information, and financial and business term  
7 information broken down by individual clients and agreements. Defendant  
8 states Plaintiffs' counsel has access to the documents in full  
9 unredacted form.  
10

11           Plaintiffs oppose the request to seal arguing that said documents  
12 do not disclose client names or client information and Defendant has  
13 failed to demonstrate good cause for sealing from public view.

14           The Court has reviewed the subject exhibits. Plaintiffs have failed  
15 to show that such information sought to be sealed is not sensitive  
16 business information as to Defendant Nationwide. The Court grants  
17 Defendant Nationwide's motion to seal the exhibits attached to the  
18 Bergland Declaration.

19           **III. CONCLUSION**

20           The Court has reviewed the record, the pending motions, and is fully  
21 informed. For the foregoing reasons, the case is hereby stayed pending  
22 resolution of the pending appeal at the Ninth Circuit Court of Appeals.  
23

24           **IT IS ORDERED:**

25           1. Defendant Freedom Debt Center's Motion to Stay Trial Court  
26 Proceedings, **ECF No. 91**, is **GRANTED**. This case is **STAYED** pending the

1 interlocutory appeal, **AND** until further notice by the Court.

2 2. Plaintiffs' Motion for Class Certification, **ECF No. 110**, is  
3 **DEFERRED** until the stay is lifted or until further order of the Court.

4 3. Defendant Nationwide Support Services, Inc.'s Motion to Seal,  
5 **ECF No. 131**, is **GRANTED**.

6 4. On or before **October 1, 2012 at 2:30 p.m.**, the parties shall  
7 file a joint status report apprising the court of the status of the  
8 pending appeal. Any decision of the Ninth Circuit Court of Appeals  
9 concerning the pending appeal shall be reported to the Court by the  
10 parties when it occurs.

11 The District Court Executive is directed to file this Order and  
12 provide copies to counsel.

13 **DATED** this 24th day of April, 2012.

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16 ***s/Lonny R. Suko***

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18 LONNY R. SUKO  
19 UNITED STATES DISTRICT JUDGE  
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